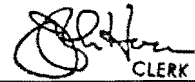


FILED

SEP 16 2015


CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

KATRINA WAGNER,

Plaintiff,

vs.

AMERICAN FAMILY INSURANCE,

Defendant.

CIV. #15- 4142

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

COMES NOW the Plaintiff, Katrina Wagner, by and through her counsel of record, and for her causes of action against the Defendant, hereby states and allege as follows:

NATURE OF THE ACTION

This is a diversity suit to recover uninsured motorist coverage (UM) brought by Plaintiff Katrina Wagner against Defendant American Family Insurance ("American Family"). The Plaintiff was severely and permanently injured in an automobile collision. The vehicle responsible for the accident was uninsured, and Plaintiff seeks to be made whole pursuant to the uninsured coverage available to her as an insured under her policy with American Family.

PARTIES

1.

Plaintiff Katrina Wagner is a citizen of the State of South Dakota.

2.

Upon information and belief, Defendant American Family is a corporation duly organized and existing under the laws of the State of Wisconsin with a principal place of

business located at 6000 American Parkway, Madison, WI 53783-0001, which at all relevant times was duly authorized to issue insurance policies in the State of South Dakota.

JURISDICTION AND VENUE

3.

Plaintiff invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1332 based upon the diversity of the parties. The amount in controversy exceeds the sum of \$75,000.

4.

A substantial part of the events giving rise to this action occurred in South Dakota, and thus, venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2).

FACTS

5.

Defendant American Family provided auto coverage to the Plaintiff pursuant to an insurance policy issued as Policy Number 00-281-548752-1300 (“the Policy”). *See* Exhibit A. The Policy was fully paid, effective and in force on January 15, 2012.

6.

The Plaintiff was an insured under the Policy, which provided uninsured coverage up to a limit of One Hundred Thousand Dollars (\$100,000). *See* Exhibit A.

7.

On January 15, 2012, while the Policy was in force, the Plaintiff was severely and permanently injured in an automobile collision. The collision and the Plaintiff’s resulting injuries and other damages were the fault of Seth Dismounts Thrice. Dismount Thrice’s vehicle rear-ended the Plaintiff’s vehicle in South Dakota. The impact from the collision forced the Plaintiff’s vehicle forward, causing her to crash into the vehicle ahead of her, at which point her

vehicle was pushed further into the intersection where she collided with two more vehicles in the intersection.

8.

The collision between Dismounts Thrice's vehicle and the Plaintiff's vehicle was solely and proximately caused by Dismounts Thrice's negligence.

9.

The tortfeasor and the vehicle that he was driving were uninsured.

10.

Defendant American Family has refused and continues to refuse payment of Plaintiff's full benefits under her policy of insurance.

COUNT ONE

11.

Plaintiff hereby realleges paragraphs 1-10 and all previous paragraphs and incorporates them as though fully set forth herein.

12.

By virtue of its Policy of insurance in effect on January 15, 2012, and Plaintiff's status as an insured under the policy, Defendant American Family is contractually obligated to pay Plaintiff the limit of her uninsured motorist benefits as a result of the automobile collision caused by the tortfeasor.

13.

Defendant American Family has breached its duty to pay Plaintiff uninsured motorist benefits pursuant to the Policy.

14.

Defendant's breach of its duties under the Policy has resulted in substantial damages to the Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for the following relief:

- (1) For judgment against the Defendant in an amount to be determined by the jury that will fully compensate Plaintiff for the severe and permanent injuries and all other damages that she has sustained;
- (2) For attorneys' fees pursuant to SDCL 58-12-3;
- (3) For pre-judgment and post-judgment interest;
- (4) For costs and disbursements herein; and
- (5) For such other and further relief as the Court deems just and equitable.

Dated this 16th day of September, 2015.

**JOHNSON, JANKLOW, ABDALLAH,
BOLLWEG & PARSONS, L.L.P.**

BY 

Scott A. Abdallah (scott@janklowabdallah.com)

P.O. Box 2348

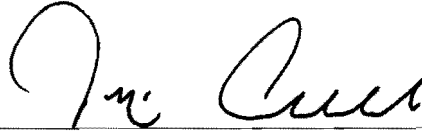
Sioux Falls, SD 57101-2348

(605) 338-4304

Attorneys for the Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

A handwritten signature in black ink, appearing to read "Scott A. Abdallah", written over a horizontal line.

Scott A. Abdallah